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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

JAN 21 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re Applications of)	MM Docket No. 93-88
)	
EZ COMMUNICATIONS, INC.)	File No. BRH-910401C2
)	
For Renewal of License of FM Radio)	
Station WBZZ(FM) on Channel 229B)	
at Pittsburgh, Pennsylvania)	
)	
ALLEGHENY COMMUNICATIONS GROUP,)	File No. BPH-910628MC
INC.)	
)	
)	
For Construction Permit for)	
a New FM Broadcast Station on)	
Channel 229B at Pittsburgh,)	
Pennsylvania)	

To: Honorable Edward Luton
Administrative Law Judge

**REPLY TO RESPONSES TO ALLEGHENY PETITION TO
ENLARGE ISSUES RE RENEWAL EXPECTANCY**

Allegheny Communications Group, Inc. (Allegheny), by its counsel, hereby replies to the Opposition of EZ Communications, Inc. (EZ) and the Comments of the Mass Media Bureau (Bureau) re Allegheny's December 21, 1993, Petition To Enlarge Issues Re Renewal Expectancy. In support whereof, the following is shown.

EZ's Opposition is based on procedural grounds, relying on the Hearing Designation Order (HDO) herein. The Bureau, however, recognizes that the Commission's more recent Memorandum Opinion and Order herein (FCC 93-513), released December 6, 1993), pointedly invites consideration of

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Allegheny's allegations under the renewal expectancy issue. The key question thus becomes whether there is presented a sufficient prima facie showing to warrant evidentiary inquiry.

Certain key facts are not in dispute. Thus, it is a matter of record that Ms. Liz Randolph submitted a statement dated April 27, 1989, to the Commission in which she alleged misconduct by EZ in its operation of Pittsburgh station WBZZ. Ms. Randolph specifically stated that:

"I am also requesting that this letter be made part of the formal record in WBZZ's Application Renewal Request." (Allegheny Petition To Enlarge, Att. A).

It is also not disputed that on May 24, 1991, EZ and Ms. Randolph reached a settlement agreement and that the presiding Judge specifically spelled out that the settlement included the following: (1) Ms. Randolph was obligated to withdraw her letter at the FCC; (2) Ms. Randolph agreed not to file any further complaint with the FCC; (3) Ms. Randolph agreed not to assist anyone in anyway in the filing of a complaint against the station; (4) Ms. Randolph agreed, in the event some other party filed against the station, to refuse to testify. Further, these were the only specific terms and conditions of the settlement involving present or future action by either party that were spelled out by the Judge in his description of the settlement agreement. See Attachment B to Allegheny's subject Petition To Enlarge.

Allegheny respectfully submits that the above undisputed facts meet a reasonable prima facie standard. With regard to Commission Rule 73.3588, the Bureau contends that the Rule is inapplicable since the WBZZ renewal was not pending at the time. However, this contention ignores the fact that Ms. Randolph's letter specifically requested that it be part of the WBZZ renewal process. Moreover, her complaint had not been withdrawn at the time (April 1, 1991) that the WBZZ renewal was filed. At that time there was on file the WBZZ renewal application and the Randolph complaint, which she had specifically asked be considered with the Station renewal. Under these circumstances, the Randolph letter was in substance an informal objection to the renewal application, thus invoking Rule 73.3588. That the settlement required Randolph to withdraw her objection is also clear. There is thus a prima facie case of Rule violation since the settlement was never filed with nor approved by the Commission.

Next, there certainly exists a prima facie case of violation of Rule 73.3589, regarding an agreement not to file a petition to deny or informal objection. The Bureau's assertion that there is no "evidence" of any such intent or agreement simply ignores the explicit language of the Judge. His description of the settlement agreement makes clear that not only had Randolph agreed not to file any further complaint or objection, but she also was precluded by the settlement from assisting any other party in any such filing. As further

evidence of just how far reaching the preclusion reached, Ms. Randolph was required to refuse to testify in case some third party filed a complaint. For the Bureau to contend that these facts are not "evidence" of an intent to file is difficult to understand. After all, Randolph had already filed one complaint with the Commission, and if she had no interest in following-up with a further filing, what was the need for the pervasive restrictions in the settlement agreement? EZ certainly perceived a filing threat and it was made sure that the settlement precluded any such new filing. There is thus a classic case of violation of Rule 73.3589. That such preclusion of filing was part of a civil settlement is of no consequence since the Rule contains no such exception.

It should also be pointed out that at this juncture, Allegheny need not offer conclusive proof, but only that substantial and material facts exist. In this connection, the supervisory Court has recently remanded a Commission ruling where evidentiary inquiry was circumscribed, see Weyburn Broadcasting Limited Partnership v. FCC, Case No. 91-1378, U.S. Court of Appeals, D.C. Circuit, 71 RR 2d 1386 (1993). Here, there needs to be an evidentiary exploration of the settlement agreement so that the questions of Rule violations and abuse of process can be resolved.

Respectfully submitted,

**ALLEGHENY COMMUNICATIONS GROUP,
INC.**

By


Morton L. Berfield

Cohen and Berfield, P.C.
1129 20th Street, NW, Suite 507
Washington, DC 20036
(202) 466-8565

Its Attorney

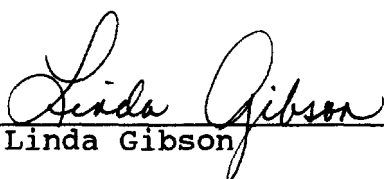
Date: January 21, 1994

CERTIFICATE OF SERVICE

I, Linda Gibson, do hereby certify that on the 21st day of January 1994, a copy of the foregoing "Reply To Responses To Allegheny Petition To Enlarge Issues Re Renewal Expectancy" was sent first-class mail, postage prepaid to the following:

Paulette Y. Laden, Esq.*
Robert A. Zauner, Esq.
Hearing Branch
Federal Communications Commission
2025 M Street, N.W., Room 7212
Washington, D.C. 20554

Rainer K. Kraus, Esq.
Herbert D. Miller, Esq.
Koteen & Naftalin
1150 Connecticut Avenue, NW
Suite 1000
Washington, DC 20036
Counsel for EZ Communications, Inc.


Linda Gibson

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